

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76212 of 2019

WITH

Customs Appeal No. 76213 of 2019

WITH

Customs Appeal No. 76214 of 2019

AND

Customs Appeal No. 76215 of 2019

(Arising out of the common Order-in-Appeal No. HALDIA/CUS(PORT)/38-41/2019 dated 14.03.2019 passed by the Commissioner of Customs (Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Emami Agrotech Limited

687, Anandapur, E.M. By Pass,
Kolkata – 700 107

: Appellant

VERSUS

Commissioner of Customs (Port)

Haldia Commissionerate

: Respondent

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant,
For the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76123-76126 / 2025

DATE OF HEARING: 30.04.2025

DATE OF DECISION: 02.05.2025

ORDER: [PER SHRI ASHOK JINDAL]

As all the appeals are having a common issue, therefore, the same are disposed of by a common order.

2. The facts of the case are as under: -

(i) M/s. Emami Agrotech Limited (hereinafter referred as to the 'appellant') is inter alia engaged in the business of import, processing and sale of diverse kinds of edible oils including crude palm oil.

(ii) By virtue of notification No.50/2017-Customs dated 30.06.2017, amended by Notification No.71/2017-Customs dated 11.08.2017, the Basic Customs Duty (hereinafter referred to as 'BCD') on the crude palm oil was fixed at 15%. Further, vide Notification No. 87/2017-Customs dated 17.11.2017 (hereinafter referred to as 'the said Notification' / 'the impugned Notification'), the said duty was enhanced to 30%. The said notification, though issued on 17.11.2017, was published in the Official Gazette only on 20-11-2017.

(iii) In November 2017, the appellant imported two consignments of crude palm oil (hereinafter referred to as 'the goods') from Singapore through vessels MT Express and MT Nan Lian 006, with M/s. Seaport Services Pvt. Ltd. as its agent (hereinafter referred to as 'the Agent'). In this respect, four bills of bearing nos. 4020900, 4023078, 4026088 and 4027996, all dated 16.11.2017, were filed for home consumption of the goods, assessing the BCD @

15%, thereby duty payable amounting to Rs. 12,33,81,081/-. The Customs Authorities granted the entry inward for the said consignments on 18.11.2017 and 19.11.2017 respectively.

- (iv) Subsequently, the Customs Authorities assessed the applicable BCD as 30% as duty in force on the date of entry inward in accordance with proviso to Section 15 of the Customs Act, 1962 thereby demanding the excess duty. Consequently, the appellant deposited the differential duty, under protest, to clear the goods for business exigencies. The following table captures the events in respect of the consignments:

| S. N | Particulars | Consignme nt 1 MT Express (Voy 10/17) | Consignment 2 MT Nan Lian 006 (Voy. 1714) |
|-------------|---|--|--|
| 1. | Date of Import General Manifest ('IGM') | 13-11-2017 | 15-11-2017 |
| 2. | Date and time of Arrival (as per the statement of facts from the agent) | 14-11-2017 23:50 | 15-11-2017 20:10 |
| 3. | Notice of Readiness submission date by the master | 15-11-2017 | 15-11-2017 |
| 4. | Date of BOES | 16-11-2017 | 16-11-2017 |
| 5. | Duty paid through duty scrips | 16-11-2017 | 16-11-2017 |
| 6. | Issue date of impugned notification enhancing duty to 30% | 17-11-2017 | 17-11-2017 |
| 7. | Entry Inward Date | 18-11-2017 | 19-11-2017 |
| 8. | Publishing date of impugned notification | 20-11-2017 | 20-11-2017 |

3. Thereafter, the appellant filed a writ petition bearing WPO No. 27 of 2018 on 16.01.2018 before the Hon'ble Calcutta High Court challenging the assessment of the impugned Bills of Entry. The said petition was disposed of on 12.06.2018 with a direction to file an appeal before the Commissioner of Customs to exhaust the available remedy.

3.1. Accordingly, the appellant had filed four appeals against each of the Bills of Entry in question before the Ld. Commissioner of Customs (Appeals), Custom House, Kolkata, but the Ld. Commissioner (Appeals) rejected the appeals filed by the appellant vide the impugned order dated 14.03.2019, thereby confirming the applicable rate of duty as 30%.

4. Against the said order, the appellant is before us.

5. The Ld. Counsel appearing on behalf of the appellant has made the following submissions: -

(i) The impugned Notification shall be operational only from the date of its publication in the Official Gazette as mandated in terms of Section 25 (1) of the Act.

(ii) As evident from the gazette copy of the impugned notification, it was digitally signed at 11:56:05 +05:30 on 20.11.2017. Furthermore, the Report dated 23.04.2025, obtained from the website of Department of Publication, Ministry of Housing and Urban Affairs, confirms that the impugned Notification was issued on 17.11.2017 and published in the Gazette on 20.11.2017. It is now well settled that a notification takes effect from the date and time

it is electronically published in the Gazette and mere issuance of a notification, without its publication, holds no legal effect, as the intended audience cannot be deemed to have knowledge of it until such publication occurs.

(iii) It is important to highlight that Section 25(1) of the Act empowers the Central Government to exempt, wholly or partially, any goods of a specified description from customs duty through a notification published in the Official Gazette. However, with effect from 14.05.2016, Section 25(4) stipulates that, unless otherwise specified, every notification issued under Section 25(1) shall take effect from the date it is issued by the Central Government for publication in the Official Gazette, thereby creating contradiction with the mandate under Section 25(1).

(iv) In this regard, reliance is placed on the decision in the case of *Ruchi Soya Industries Vs. Union of India [2021 (375) E.L.T. 497 (Guj.)]*, wherein the Hon'ble Gujarat High Court declared Section 25(4) of the Act as arbitrary and contrary to Section 25(1) and (2A) of the Act. The High Court directed the Department to refund the excess amount collected from the petitioner as per the Notification No. 29/2018-Cus dated 01.03.2018 which was published in Official Gazette on 06.03.2018 that was after the date of filing of Bills of Entry therein.

(v) Reliance has also been placed on the following:-

- *Ruchi Soya Industries Vs. UOI [2019 (9) TMI 1374 (AP)]*
- *Ruchi Soya Industries Vs. UOI [2020 (7) TMI 429 (Mad)]*
- *M.D. Overseas Ltd. Vs. UOI [2020 (371) ELT 359 (Del.)]*
- *Adani Wilmar Ltd. Vs. C.C. [2023 (2) TMI 144 (Tri. - Bang.)]*
- *PMC Projects IP Ltd and Velji P Sons Vs. C.C. [2024 (5) TMI 794 (Tri. - Ahmd)]*
- *Faqir Chand Vinod Kumar & Co. Vs. C.C. (2023 (5) TMI 261 (Tri. - Mum))*
- *Ruchi Soya Industries Vs. UOI [2022 (8) TMI 664 (Cal)]*
- *Union of India Vs. M/s GS Chatha Rice Mills [2020 (374) ELT 289 (SC)]*

(vi) In light of the judgments cited above, the appellant submits that since the entry inward was granted on 18.11.2017 and 19.11.2017, while the impugned notification was published only on 20.11.2017, the notification is not applicable to the present case. Accordingly, the Appellant is entitled to a refund of the excess duty paid along with interest.

(vii) Without prejudice to the above, it is a well established principle of law that the Department cannot be allowed to take advantage of its own wrong and the Appellant cannot be made to suffer for the delay caused by the Customs Authorities for the grant of entry inward.

(viii) Without prejudice to the above submission, the Appellant submits that the delay in the grant of entry inward in respect of the two consignments in question was solely due to administrative inaction on the part of the Customs Authorities, and at no point was there any lapse or negligence on the part of the Appellant.

(ix) As per Part-1 (Import Department) of Annexure-1 dated 14.11.2017 and 15.11.2017 issued by the Assistant Commissioner of Customs, the grant of entry inward in the present case was contingent upon submission of the store list and crew property list, which were duly furnished by the Agent for both consignments. In the instant case, as required under Section 30 of the Act, Import General Manifests (IGMs) for vessels MT Express and MT Nan Lian 006 were filed on 13.11.2017 and 15.11.2017, respectively, prior to vessel arrival. These IGMs were accompanied by cargo declarations, crew lists, store lists, and applications for entry inward, as per the then-applicable Import Manifest (Vessels) Regulations, 1971. The same has been acknowledged vide replies dated 11.03.2025 to the RTI applications, wherein the Assistant Commissioner, Mini Customs House, Haldia, (CPIO) categorically confirmed that the IGMs generated from the ICES system for both consignments accompanied the cargo declaration, crew list and store list.

(x) Thereafter, in terms of Section 31 of the Act, the onus was on the customs authorities to grant entry inward. Although no strict timeline is prescribed under Section 31 for grant of entry inward, judicial precedents have established that entry inward must be granted expeditiously, with least possible delay. In this regard reliance is placed on the case of *Mafatlal Industries Ltd. Vs. UOI [1993 (63) ELT 616 (Guj.)]*, affirmed in *1994 (72) ELT A142 (SC)*. In the said case, the Hon'ble Gujarat High Court also observed that ideally, the date of submission of the notice of readiness by the master should be the date of grant of entry inward.

(xi) Further, vide reply dated 05.02.2025 to RTI application, the CPIO, stated that entry inward is granted as soon as the boarding officer receives the entry inward documents and no delay occurs unless there is a discrepancy in such documents.

(xii) In the instance case, the master duly tendered the notice of readiness on 15.11.2017 for both consignments. No reasons are forthcoming for the delay of 3-4 days by the Customs Authorities in granting entry inward from the date of submission of the notice of readiness. Moreover, there is no allegation from the Customs Authorities suggesting any discrepancy in the documents submitted. It is well settled principle of law that the department cannot take advantage of its own errors and subject the assessee to higher liability arising out of its own errors and actions as held by the

Hon'ble Supreme Court in the cases of *Priyanka Overseas Ltd. Vs UOI [1991 (51) ELT 185 (SC)]* and *Northern Plastics Ltd. Vs CC & CE [1999 (113) ELT 3 (SC)]*. Therefore, the duty payable should be assessed based on the rate of duty prevailing on the date of the notice of readiness (15.11.2017) and the date of the Bills of Entry (16.11.2017).

(xiii) The Appellant cannot be made to suffer the consequences of the delay caused by the Customs Authorities in granting entry inward. Hence, the Appellant is entitled to refund of the excess customs duty paid amounting to Rs. 12,33,81,081/- along with interest.

5.1. In view of the above submissions, the Ld. Counsel for the appellant prays for setting aside the impugned order and allowing their appeals.

6. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order. He submits that the Entry Inward were dated 18.11.2017 and 19.11.2017 respectively and the said Notification is dated 17.11.2017 and therefore, the appellant shall be liable to pay the enhanced duty.

7. Heard the parties and considered their submissions.

8. We find that in this case, the following facts are not in dispute: -

| Sl.No. | Particulars | Consignment 1 MT Express (Voy 10/17) | Consignment 2 MT Nan Lian 006 (Voy. 1714) |
|---------------|---|---|--|
| 1. | Date of Import General Manifest ('IGM') | 13-11-2017 | 15-11-2017 |
| 2. | Date and time of Arrival (as per the statement of facts from the agent) | 14-11-2017 (23:50 Hrs) | 15-11-2017 (20:10 Hrs) |
| 3. | Notice of Readiness submission date by the master | 15-11-2017 | 15-11-2017 |
| 4. | Date of Bills of Entry | 16-11-2017 | 16-11-2017 |
| 5. | Duty paid through duty scrips | 16-11-2017 | 16-11-2017 |
| 6. | Issue date of impugned notification enhancing duty to 30% | 17-11-2017 | 17-11-2017 |
| 7. | Entry Inward Date | 18-11-2017 | 19-11-2017 |
| 8. | Publishing date of impugned notification | 20-11-2017 | 20-11-2017 |

8.1. On going through the said facts, it is seen that the dates of arrival of the consignments are 14.11.2017 and 15.11.2017 and the Bills of Entry were filed by the appellant on 16.11.2017. The duty was also paid on the same day. We observe that although the said Notification is having the date as 17.11.2017, the same was published in the Official Gazette on 20.11.2017.

9. Section 15 of the Customs Act, 1962 prescribes the date for determination of rate of duty and the tariff value of imported goods, as under: -

" *Customs Act, 1962*

SECTION 15. Date for determination of rate of duty and tariff valuation of imported goods. (1) *The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -*

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section,

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft [or the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

(2) The provisions of this section shall not apply to baggage and goods imported by post."

9.1. On going through the above provisions, we observe that in case the goods are entered for home consumption under Section 46, the date for determination of rate of duty shall be the date on which the Bill of Entry in such case is presented under that Section. Admittedly, in this case, as the goods have already entered the Indian Customs, therefore, the date of filing of the Bills of Entry is the date for the purpose of determination of the rate of duty.

9.2. Whereas, the Revenue is of the view that as per the proviso thereto, since the Bills of Entry have been presented before the date of entry inwards of the vessel or the arrival of the aircraft or vehicle by which the goods were imported, the Bills of Entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.

9.3. As it is a fact on record that the date and time of arrival of the consignments, as mentioned hereinabove, are 14.11.2017 at 23:50 hours and 15.11.2017 at 20:10 hours, therefore, the appropriate provisions of Section 15(1)(a) are applicable to the facts of this case.

9.3.1. Even if we take the view adopted by the Revenue that as per the said proviso, the date of entry inwards is to be taken as the date on which the rate of duty is to be determined, in such circumstances also, it remains an admitted fact that the Notification dated 17.11.2017 was published in the Official Gazette on 20.11.2017. For better appreciation of the facts, the report of publication of the said Notification in the Official Gazette is reproduced below: -

Government of India
Ministry of Housing and Urban Affairs
Department of Publication

(eGazette - Extra Ordinary)

Report Date: 23-Apr-2025 11:37:08 AM
Total No. of Gazettes Found: 6

| | Department | Office | Subject | Issue Date | Publication Date | Gazette No. | |
|----|---------------------|----------------------------------|-------------------------------|---|------------------|-------------|------------------------|
| 1. | MINISTRY OF FINANCE | DEPARTMENT OF ECONOMIC AFFAIRS | BUDGET DIVISION | GOVERNMENT OF INDIA HEREBY NOTIFIES SALE RE ISSUE OF THE FOLLOWING GOVERNMENT STOCKS | 20-NOV-2017 | 22-NOV-2017 | NOT AVAILABLE (180356) |
| 2. | MINISTRY OF FINANCE | DEPARTMENT OF FINANCIAL SERVICES | NOT APPLICABLE | WHEREAS, THE USE OF AADHAAR AS IDENTITY DOCUMENT FOR DELIVERY | 20-NOV-2017 | 22-NOV-2017 | NOT AVAILABLE (180346) |
| 3. | MINISTRY OF FINANCE | DEPARTMENT OF REVENUE | NOT APPLICABLE | WHEREAS, THE DESIGNATED AUTHORITY VIDE INITIATION NOTIFICATION NO | 17-NOV-2017 | 21-NOV-2017 | NOT AVAILABLE (180328) |
| 4. | MINISTRY OF FINANCE | DEPARTMENT OF REVENUE | CENTRAL BOARD OF DIRECT TAXES | IT IS HEREBY NOTIFIED FOR GENERAL INFORMATION THAT THE ORGANIZATION MS INTERNATIONAL CROPS RESEARCH INSTITUTE FOR THE SEMI ARID TROPICS | 17-NOV-2017 | 20-NOV-2017 | NOT AVAILABLE (180324) |

| | | | | | | | |
|----|---------------------|--------------------------------|----------------|---|-------------|-------------|------------------------|
| 5. | MINISTRY OF FINANCE | DEPARTMENT OF REVENUE | NOT APPLICABLE | CENTRAL GOVERNMENT BEING SATISFIED THAT IT IS NECESSARY IN THE PUBLIC INTEREST SO TO DO HEREBY MAKES THE FOLLOWING FURTHER AMENDMENTS | 17-NOV-2017 | 20-NOV-2017 | NOT AVAILABLE (180322) |
| 6. | MINISTRY OF FINANCE | DEPARTMENT OF ECONOMIC AFFAIRS | NOT APPLICABLE | WITH THE APPROVAL OF THE COMPETENT AUTHORITY, AN UPDATED HARMONIZED MASTER LIST OF INFRASTRUCTURE | 17-NOV-2017 | 18-NOV-2017 | NOT AVAILABLE (180317) |

9.3.2. In this regard, we take note of the decision rendered by the Hon'ble Gujarat High Court in the case of *Ruchi Soya Industries Ltd. v. Union of India* [2021 (375) E.L.T. 497 (Guj.)] wherein it was observed as under: -

"20. In view of above judgment and order of the Andhra Pradesh High Court dealing with the same issue, we are of the opinion that the same should also apply to the cause of action within the territorial jurisdiction of this Court also so as to maintain consistency for application of the provision of the Customs Act, 1962, which is a Central Act. As held by the Supreme Court in case of Kusum Ingots (supra), the parliamentary legislation without receiving the consent of the President of India and published in a Official Gazette unless specifically excluded will apply to entire territory of India. If passing of the legislation gives rise to cause of action, the writ petition questioning the constitutionality thereof can be filed in any High Court of the country having requisite territorial jurisdiction and an order passed on writ petition questioning the constitutionality of Parliamentary Act, where interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India will effect throughout the territory of India, subject to applicability of the Act."

9.3.3. As the admitted fact is that the said Notification had been published in the Official Gazette on 20.11.2017, therefore, even if the dates of entry inwards are taken to decide the rate of duty applicable, the same are 18.11.2017 and 19.11.2017, which is prior to the publication of the said Notification in the Official Gazette.

9.3.4. Further, in the case of *Ruchi Soya Industries Ltd. v. Union of India* [2021 (375) E.L.T. 40 (Mad.)], it was again observed as under: -

"18. We find that the aforesaid issue relating to publication has also been answered in favour of petitioner and not only this, the contention with regard to the amendment has also been answered in detail by the Division Bench of the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. (supra). The findings recorded in the said judgment are extracted hereinunder :

"76. In view of the law declared by the Courts with regard to interpretation of taxing statutes, it is clear that when the amended provision or any provision of the statute creates serious inconvenience, serious absurdity, confusion or friction, contradiction and conflict between its various provisions, the same is illegal and amendment of sub-section (4) of Section 25 giving effect to the notification from the date of its issue for publication in the Gazette is an arbitrary exercise of power by the Legislature and it is totally contrary to the purport of sub-section (1) and sub-section (2A) of Section 25 of the Act, which mandates publication of notification in the Official Gazette. Therefore, to avoid inconvenience, serious absurdity, confusion or friction, contradiction and conflict between various provisions, amended provision of sub-section (4) of Section 25 which is enacted by arbitrary exercise of power by the Legislature, is liable to be struck down.

77. The notification was published on 6-3-2018 which is impugned in these writ

petitions, published electronically on 6-3-2018. In view of the decision taken by the Government of India in terms of Section 8 of the Income-tax Act, to avoid physical printing of Gazette notification to publish the same exclusively by electronic mode, so as to attribute knowledge to the public at large. The notification was signed by Rakesh Sukul on 6-3-2018 at 19:15:13 + 05'30'. When notification needs to be signed digitally and only when the notification was uploaded and published in the Official Gazette, the same is made available for public. Perhaps, to avoid such contingency to give effect to the notification on the date of publication, the Government of India amended sub-section (4) of Section 25 of Customs Act, 1962. But, sub-section (1) and sub-section (2A) of Section 25 were not suitably amended and they remained as it is. Therefore, sub-sections (1), (2A) and (4) of Section 25 are running contra to one another, creating confusion in the minds of public at large, atleast to the person who is dealing with the department. Thus, it is evident from the record that the notification was not signed atleast by the competent authority on the date of presentation of ex-bond bill of entry before the competent authority for release of imported goods for human consumption in accordance with Section 15(l)(b) read with Section 68 of the Customs Act for clearance of the goods for human consumption and the relevant date for determination of the duty is the date of presentation of ex-bond bills of entry for release of the goods which is explicit from Section 15(l)(b) of the Act. But the respondents collected the customs duty

initially @ 30%, but later by the time of release, customs duty was enhanced @ 44% and demanded the variation of 14%.

78. As discussed above, sub-section (4) of Section 25 created absurdity, confusion and friction. The very collection of customs duty @ 44% on the imported goods belonging to these petitioners prior to the publication of notification in electronic mode is an illegality. Therefore, the petitioners are entitled to claim refund of the amount paid in excess of 30% of the original rate of customs duty as on the date of presentation of ex-bond bills of entry for clearance of import goods for human consumption. Therefore, the respondents are liable to repay the excess amount which they collected from the petitioners beyond 30% of customs duty.

79. One of the contentions raised by the Learned Counsel for the respondents, when a remedy by way of appeal under Sections 128 and 129A of the Customs Act is available, the petitioner is disentitled to claim relief under Article 226 of the Constitution of India. But, the said contention cannot be accepted for the simple reason that the appellate authority or Tribunal cannot declare any provision in the statute as illegal or arbitrary. Therefore, we find no force in the argument of the Learned Counsel for the respondents and the same is rejected.

80. In view of our foregoing discussion, Section 25(4) of the Customs Act is declared as arbitrary and contrary to Section 25(1) and (2A) of the Customs Act, 1962 and that the respondents are liable to repay the amount

collected from the petitioners for clearance of imported goods for home consumption beyond the original rate prevailing on the date of prior to date of publication of notification i.e., Rs. 2,88,16,200/- with interest paid by the petitioner from the date of deposit till the date of payment.

81. In the result, writ petitions are allowed.”

19. The aforesaid reasons squarely apply, to which no plausible answer could be given by the Learned Counsel for the respondents.

20. The issues already having been raised and decided, we have not been able to gather any other different reason to keep this matter pending, and adopting the reasoning given by the Andhra Pradesh High Court in Ruchi Soya Industries Ltd. (supra), we allow the writ petition on the same terms and direct the respondents to refund the entire excess amount paid by the petitioner as enhanced duty under protest, including the IGST amount, within a period of two months from today.”

10. In view of the above and considering the fact that the Notification No. 87/2017-Cus. dated 17.11.2017 was published in the Official Gazette on 20.11.2017 whereas the dates of entry inwards are prior to 20.11.2017, we hold that the enhanced rate of duty in terms of Notification No. 87/2017-Cus. dated 17.11.2017 is not applicable to the facts of this case. In these circumstances, we hold that differential duty / enhanced duty cannot be demanded from the appellant. The appellant are liable to pay Basic Customs Duty on Crude Palm Oil at the rate of 15%.

11. In the result, we set aside the impugned order and allow the appeals with consequential relief, if any, as per law.

(Order pronounced in the open court on **02.05.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd